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The Nation and the Constitution.

AN

Oration

DELIVERED BEFORE THE

CITY AUTHORITIES AND CITIZENS OF PROVIDENCE,

JULY 4, 1866,

BY J. LEWIS DIMAN.

PROVIDENCE:
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In Exchange,
Dartmouth College
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THE CITY OF PROVIDENCE.

RESOLUTIONS OF THE CITY COUNCIL,

Passed July 9, 1866.

RESOLVED, That the thanks of the City Council be and they are hereby tendered to PROFESSOR J. LEWIS DIMAN, for the able and eloquent Oration delivered by him at the late municipal celebration of the anniversary of American Independence.

RESOLVED, That the Committee of Arrangements for the Fourth of July Celebration be and they are hereby authorized to request of Professor DIMAN a copy of the Oration delivered by him on that day, and to cause the same to be published in such manner as they may deem expedient, fo the use of the City Council.

A true copy:

Witness, SAMUEL W. BROWN, CITY CLERK.

ORATION.

WHO among us, fellow-citizens, can have forgotten how much this festival, in former years, was graced by the presence of revolutionary heroes, whose venerable aspect was itself a benediction, as with mute eloquence, more expressive than the living voice, they reminded us of the great price with which our liberties were purchased. Long as they were spared, the conspicuous feature in each procession, we needed nothing to tell us of Bunker Hill, and Saratoga, and Yorktown. One by one they have passed away. I know not whether as I speak the last survives to hear the ringing of bells and the roar of artillery, that certify to our ears the constant and indissoluble alliance of Liberty and Union. They have passed away, but their departure has taken nothing from the sacredness of our festival, for we greet to-day another presence, inspiring the same reverence and gratitude; and when in all the years to come, we, and our children, and our children's children, gather to these annual rites, the day still shall seem apparelled with the same sacred memories, as we shall say, "These were the men who flew with Burnside to the Capital; who braved with

him the storm at Hatteras; who held with him the bridge at Antietam; who bore with him the bitter anguish at Fredericksburg; who tasted with him the ecstacy of the supreme hour when the serpent's head was bruised at Richmond." Long as these men survive, how can this day return without awakening in all our breasts a devout emotion? Let it be a day, throughout all the land, of glad rejoicing. Let every bell ring its loudest peal; let cannon thunder to cannon from every city and village; let age forget its infirmity, let labor cast aside its burden; but let it also be a day dedicated to a study of the sacred obligations which those sufferings and sacrifices have imposed. From the triumphal arch that spans our streets, '76 and '66 look down upon us.

Through the tremendous struggle which the fortitude and valor of these men have brought to a successful close, we have passed to a higher plane of political experience. Like the patriarch, crowned with the power of a new name by his mysterious wrestling with an unseen enemy, we have come from the night of conflict with a new sense of our nationality, with a far profounder appreciation of the meaning of our institutions. The day that broke over our Peniel saw realized the splendid dream of Milton, of "a noble and puissant nation rousing herself like a strong man after sleep, and shaking her invincible locks." We had cast off forever the miserable sophistries which for a time had paralyzed political opinion, and stood erect in the consciousness of assured nationality. The night was indeed dark and terrible through which we passed, but remembering the watchful Providence that sustained us, we too may say, "we have seen God face to face."

It is, then, no disparagement of the good and wise who have gone before us, to claim that we have been brought to a deeper perception of the foundations of our nationality, and to a more correct interpretation of those great ideas which are incorporated into our body politic. There are things which experience alone can teach, and doubly sad would seem our bitter sacrifices should they leave us no compensating lessons. Against our will the appeal to arms was made, and in the unerring course of that righteous Providence which holds nations not less than men to an account, they that imagined a vain thing were ruled with a rod of iron and dashed in pieces like a potter's vessel. But in such a political system as ours, the sword can never be the final arbiter. It flashes from its scabbard at the bidding of ideas. The mutual recognition, by the mass of the people, of fundamental principles of policy, is the only safeguard of public peace. "The foundation of government," said one of the fathers of the Republic, "is some principle or passion in the minds of the people."

Nations are only larger men, like men endowed with individual life, obeying analogous laws of growth subject, alas, as the silent gates of Thebes, the tottering columns of the Acropolis, the sunken pavement of the Forum alike testify, to the same decay. And like the individual, the nation comes only in the course of years to know itself, to interpret its own deeper tendencies and instincts. Its moral greatness and energy are always proportioned to this self-consciousness. Americans have been laughed at for their faith in manifest destiny. Like all supreme convictions of the soul, when not viewed in relation to the whole scope of duty,

it may prove the pathway to transgression and ruin. But a "sense sublime" of some indissoluble relation to the vast range and purposes of that divine administration which overarches all ages and nations, and whose triumphant issue shines from the serene splendors of the latter day, can alone lift any nation to the level of historic greatness. The absence of this conviction leaves the annals of the great oriental monarchies as flat and dry as the Desert of Sahara; its presence renders the three great successive commonwealths, the Hebrew, the Roman and our own, the noblest growth of time. Instead, then, of remitting our faith in manifest destiny, we ought to covet an ampler sense of our historic mission. Of necessity absorbed in the unexampled growth of a material civilization, the meaning of our own recorded past has remained hitherto an enigma to us. There has been little in its outward form to awaken interest. It is the history, for the most part, of plain, honest men. It is decorated with none of the illusions of antiquity and romance. No venerable monuments of by-gone ages overshadow us with a legendary lore that silently infuses its fascinating lessons. We have lived in the future more than in the past. Not the most hurtful, discordant, contradictory views aroused us to a just appreciation of our annals.

Need I mention, in proof of the slight degree to which the nation has reflected on itself, the fact, known to all, that the first philosophic study of our institutions proceeded from a foreigner. Nor was this fact without most momentous consequences, for great and undeniable as were the merits of De Tocqueville's book, and far as I should wish to be from detracting anything

from its well-deserved repute, yet no one, to-day, can doubt that his strange assertion "that the Union was an accident," and his confident prediction that in case of a collision between the States and the Federal authority, the latter must inevitably yield, had a vast and most pernicious influence in shaping the public sentiment of England at the outset of our civil conflict. The conclusions of the fair-minded Frenchman were accepted without dispute, and were the source of those opinions so freely expressed in Parliament and in so many public meetings; and had England incurred the deep damnation of that step to which at one time she approached so near, had she recognized as one of the family of nations the confederacy whose corner stone was an arrogant denial of what England for years had made her boast, the direful consequences might justly have been traced to this fundamental error respecting the nature of our Federal system which the authority of De Tocqueville had done so much to disseminate. Of such vital importance is it to know for ourselves, and to make others comprehend, the true foundations of our nationality.

The author of the Palmetto Geography, published during the war for the benefit of southern youths, who derived the common law from the book of Leviticus, did not in fact shoot wider of the mark than many of those English writers who have aimed to enlighten their countrymen respecting our institutions. Well read in Thucydides and Aristotle, but ignorant of Hamilton and Madison, they have reasoned from the narrow municipal life of the ancient democracies, to our essentially original and imperial system. Misled by names, they have overlooked real distinctions. They have

repeated stale aphorisms respecting Republican institutions, forgetting, or not caring to remember, that the term Republic has been equally applied to the Dutch Confederation, in which dwelt no direct principle of popular liberty; to Poland, the most oppressive compound the world has ever seen, of monarchy and aristocracy; to the Italian cities of the middle ages, which were mere oligarchies; and to imperial Rome, where the distinguishing feature of American republicanism, the representative system, was never recognized. Strange to say, the sole English statesman of any note who seems to have seized hold of the fact that there was anything distinctive or peculiar in our liberties, was the leader of the Tory party in the House of Commons, Mr. Disraeli, who termed the United States a "territorial democracy," an apt designation, provided the immense difference be recognized between an American farmer and an European peasant, one of a class which has never yet proved itself capable of local self-government.

We cannot too deeply engrave on all our minds the fact that our political system is an essentially new experiment in the life of States. The form of government here established has no prototype in any former age. It refuses to conform to the well-known division of Aristotle. We seek in vain to explain it by Greek or Roman analogies. It embodies novel political ideas, and can be explained only from analysis of its own interior principles. For purposes of comparison we may class it, as a recent English writer has done, with the Achaian League, with the Swiss Cantons, with the seven United Provinces of the Netherland, but the resemblance is superficial. Neither in the constitution

of our Federal system, nor in the elements out of which the Federal system itself is formed, is there any real analogy. As our democracy is an original and unexampled democracy, so our Federal system is an original and unexampled Federal system. We shall halt and stumble in all our conclusions, if we do not reason from this postulate.

Settled for the most part as English colonies, inheriting English maxims and usages, copying to a great extent in the method of our colonial administration, English parliamentary forms; above all, bringing with us across the sea the boon of the Common Law, it has been our habit to regard England as the exclusive source of our political existence. Nor has the error been confined to our side of the Atlantic. England has loved to speak of America as an unruly but vigorous offspring. That our institutions are a mere offshoot of theirs, has been a favorite opinion, especially with that class of Englishmen who have given us their most hearty sympathy. America, they have repeated, is but another England, without her battlemented castles, her ivied manor-houses, her gray cathedrals, her court and her upper class. New York and Philadelphia and Boston, are Liverpool and Manchester and Edinburgh. In other words, that famous English middle class, whose characteristics Matthew Arnold has so keenly analyzed, reaches in America its perfect growth.

Without wishing to depreciate the debt we owe to England, I maintain that this theory of the genesis of our political ideas is a radical mistake. We brought much from the mother land, so much that, notwithstanding the mean subserviency to selfish interests that has crept over English politics since the treaty of Utrecht,

she is old England still; but the fact cannot be overlooked that into the earliest shaping of our institutions there entered elements not of English growth, elements that were not subordinate and evanescent, but controling and permanent. We brought from England, it is true, the grand distinguishing feature of modern society, the representative system, but how altered and expanded from the narrow notions of a privilege conferred by royal grace on certain favored corporations was the right here so soon asserted as inseparable from every local municipality. In that one step, from a privilege to a right, was involved the immense transition from the middle ages to modern times. The first perpetuated a class, the second proclaimed the existence of a people.

When, in the following century, the colonies contended, that representation and taxation were inseparable, though they claimed to be standing on the platform of old English liberty, yet it was evident that they asserted a theory of representation unknown to English law. The clearest judicial mind then living, Lord Mansfield, saw the difference, and in his place in the House of Lords, he declared that the claim of the colonies, if grounded in right, went to the whole constitution of the British Empire. As a lawyer, Lord Mansfield's position was impregnable, for English representation from the beginning was prescriptive, the representation of classes, and, to-day, England is struggling for what America, from the beginning, has enjoyed, a true representation of the people.

Nor need we search far for the source of this new character which representative institutions here assumed. The elder Adams, in a letter to the Abbe de Mably, in 1782, declares that the characteristic feature

of New England institutions, which more than anything else gave an impulse to the revolution, was the system of town government. But the New England towns were the children of the New England churches, the distinctive characteristics of the civil being derived from the ecclesiastical democracy. If, therefore, we would know whence come the distinctive principles that have moulded the New England character, and which, issuing from New England, have done so much to shape the political institutions of the new world, we must go back, not to the common law, not to the writs of Simon de Montfort, but to the mighty dialectics of a French refugee, who, from his asylum amid the Alps, with a zeal consuming as Loyola's and a logic daring as Rousseau's, scattered the firebrands of revolution in the disguise of divine decrees. It is a memorable fact that the political institutions of this country thus received their most energetic impulse, not from England, but from France; and the abstract, ideal stamp then impressed upon them has not been effaced to the present day.

This abstract, ideal tendency that so much marks American political ideas from the traditional, prescriptive character of English liberty, is shown in the first assertion of that Declaration which has been read to us to-day, an assertion once hastily condemned by a famous New England orator as a "glittering generality," but which, he should have known, was old as the jurisprudence of the Antonines, affirmed, indeed, by the Roman lawyers as a mere legal maxim, but taken up and expanded by the great French jurisconsults, till a legal rule was clothed with the force and influence of a social principle, and passing from the hands of lawyers to the hands of scholars, became a principle of politics which

promises, at the present time, to modify more powerfully than any other the destinies of States. Not, then, to the English, but to the Roman law, do we owe the most characteristic features of our body politic, and our historic mission is not to perpetuate the limited, prescriptive rights that have sprung from the middle age, but to complete the illustrious fabric of Roman liberty, which, unlike the systems reared by the barbarian conquerors of Europe, recognized power not as an estate, held for the benefit of the possessors. but as a trust to be exercised for the common good. Whatever may be the analogies between American and English institutions, there is a radical distinction between a system which consists in the perpetual balance of separate estates, and a system based on one undivided sovereignty.

The study of our institutions has been legal rather than historical. The lawyer, I know, may urge that we sacrifice the chief advantage of a written constitution if we do not observe the letter. But in politics, as in religion, the letter often killeth. To the legal training of George Grenville, Burke attributed, in great part, that blindness as a statesman, which did so much to precipitate the American Revolution. The ship of State can never be safely steered by slaves to precedent.

In every country possessing a written constitution, there must be besides, an historic or providential constitution, and nothing can be more certain than that the former will never adequately express the latter. Nay, the written may not only fall short of, it may contradict the unwritten. The articles of Confederation, for example, were a written constitution, but they not only did not embody the actual living constitution that had

controlled the united action of the colonies, they virtually subverted it. The colonies were less a nation under the articles of confederation than they had been while owning a common allegiance to the British Crown. Their inchoate nationality was only marred and defaced by that miserable makeshift, the child of narrow, local jealousies, which served no other purpose than to make them sigh for the unity they had thrown away.

The written Constitution may exist or not. It may be amended or set aside. It is a human work, the attempt of men to give legal expression to a general fact. But the providential constitution must exist. It is the nation's organic life. It grows with the nation's growth and strengthens with its strength, and no written constitution can have any worth, or can endure for any time, unless the unwritten infuses itself into it.

> "There is a mystery in the soul of State,
> Which hath an operation more divine
> Than breath or pen can give expressure to."

Let me not be understood to detract from the value or authority of a written constitution. Foreigners have wondered why we were willing to make such sacrifices and shed blood so freely for a piece of paper. They little realize the intensity of that inbred reverence for Law, which with us amounts almost to a religion. We can never estimate too highly an instrument which is, beyond question, the most refined product of political wisdom the world has ever seen, and the successful establishing of which Lord Brougham himself, in his better days, before a soured and querulous old age had darkened the windows of his mind, declared to be "the most important event in the history

of our species." But the Constitution is not the State.

The maxim is often uttered, great jurists have given it their endorsement, that ours is a government of laws and not of men. John Adams calls this maxim the very definition of a Republic. When set up as a stay to hasty or illegal action, the maxim is a most sound and wholesome one. For it is unquestionably true that with reference to any private action the law is sovereign. The organic claims allegiance from the individual will. But the maxim ceases to be true when applied, not to one individual, but to the whole body politic. Here, not the law, but the people, is supreme. Not the government, but the State, under God is sovereign. "In the political order," says Mr. Brownson, "the fact precedes the law. The nation holds not from the law, but the law holds from the nation."

For the public weal the people may adopt certain rules by which to regulate their action. These rules, until regularly amended or repealed, are the supreme method. Long as they remain in operation, they justly claim of every citizen, not obedience simply, but reverence and honor; but to say that the law governs, is to confuse the fundamental principles of a free society. "It is certain," says one of the clearest political reasoners of our day, the late Sir Cornewall Lewis, "that in every sort of government the sovereign power must be legally unlimited; and that every government must be conducted by men." To surrender this fundamental principle, would be to exchange the progressive political development of Europe for the torpor of Mohammedan rule. To have first recognized this principle constitutes our distinction as a nation.

We have, in fact, suffered our instinct of nationality to become weakened by fixing our eyes too much on

the written constitution. The government has veiled the older and grander proportions of the State. Even Mr. Motley, in his letter to the London Times, at the beginning of our civil strife, committed the strange error of asserting "that the constitution of 1787 made us a nation." It did, it could do, no such thing. It was the nation that made the constitution. In the words of the preamble it asserts its imperial parentage.

By thus looking at the government rather than the State, so many of our most sagacious public men were betrayed into the admission that prior to the adoption of the constitution, the States were sovereign. This was the view of Mr. Jefferson, and was even conceded by Mr. Webster. From this view the doctrine of secession followed as a logical conclusion.

For when were the States thus severally possessed of sovereign power? Not during the colonial period, for then, as they themselves repeatedly asserted, they were mere dependencies of the British Crown. Not when Independence was first declared, for that declaration was a joint act, the assertion of a collective sovereignty. Not as separate States, but as an organized political unity, they proceeded to raise armies, to carry on war, to conclude treaties. Never were they recognized by any foreign power as endowed with other than collective sovereignty. The sovereignty wrested from the British Crown passed to the *United* States, nor by any act, nor by any declaration, nor by any pretence whatever, did any one of those States ever claim a separate and individual sovereignty. What though in the din of arms they became so oblivious of their nationality as to accept the erroneous expression of it in the Articles of Confederation, shall an error of statement

vitiate an historic fact? Let the whole dangerous doctrine of original State sovereignty be forever dismissed from the public mind. Let the words of an illustrious South Carolinian statesman be forever engraved on all our hearts: "The separate independence and individual sovereignty of the several States were never thought of by the enlightened band of patriots who framed the Declaration."

Our political system will never be secure till this notion of original State sovereignty has been exploded. No military triumphs can accomplish this. To be conquered is not to be convinced. But a few days ago, in a New York paper, the defiant declaration was put forth: "The South accepts the result in respect to its present practical application, but that acceptance does not imply any abandonment in thought of the principle upon which the secession movement was founded." It is but charity to think that by very many these views are honestly maintained, and that soon as the fearful ravages of war have been forgotten, they may reassert their malignant and destructive sway over southern sentiment; and there is no way in which these conclusions can be logically met but by ceasing to regard the nation as compounded of separate sovereignties. What though we claim that in adopting the federal constitution, the States renounced forever their separate sovereignty, and ceded it to the central power? A party competent to do, is competent to undo, and though sacred faith may be broken, and solemn pledges may be violated by such a course, yet what prevents that some miserable plea that the terms of the agreement have been broken by the other members, shall be held by one member to justify withdrawing from it?

Do we say that the very terms of the agreement imply that it shall be perpetual? Is not every treaty of alliance between nations in its terms perpetual? Was not the Holy Alliance meant to be perpetual? But what barrier have its solemn stipulations proved to the unscrupulous ambition of Bismarck?

The denial of original State sovereignty is not the denial of State rights. The rights of the States, within their appropriate sphere are sacred and inviolable as the rights of the federal government. Our political system is exposed to no greater peril than is involved in the tendency to centralization of power. But with explicit division of powers there is no division of sovereignty. The State entrusts its functions to a double set of agents, but does not abdicate its indivisible and inalienable supremacy. Between the federal and State functions no issue of subordination can arise.

Mr. Calhoun, misled by mere external resemblances, fancied that he saw in the adjustment of our Federal and State authority, a reproduction of the English system of checks and balances, and he would have rendered it more efficient by a dual executive, and by substituting concurrent for numerical majorities. It is incomprehensible how so acute a mind should have so wholly misconceived the genius of our system. The British constitution, which bears in all its features the marks of the long conflict of classes out of which it sprung, and which, like the proud Keep of Windsor, to which it has been compared, is a majestic monument of feudal civilization, seeks in the balance of Three Estates a safeguard against despotism. English liberties have grown from this antagonism. But in our system such antagonism can have no place. Our Federal and State

governments do not represent rival classes or antagonistic interests. Our interests are homogeneous and organic. The Federal and State governments are not centripital and centrifugal forces; they are happily combined like the double motion of the earth on its axis and in its orbit.

Keeping in mind this distinction between the State and government, we can easily estimate the value of that aphorism so often uttered, "that the Federal tie is weak because it is artificial." Is not every form of government artificial? Can the term be applied to the clauses of our Federal Constitution with any more propriety than to the Reform Bill or the Bill of Rights, or even to Magna Charta? Or, in what sense are the interpretations of the Constitution by the Supreme Court, which ultimately fix its meaning, any more artificial than the long series of Pretorian Edicts which stamped its peculiar character on Roman Law? If the objection has any force, it applies to every form of government that has ever existed since the legislation of Solon, or the Laws of the Ten Tables. Sir James Mackintosh gained great reputation once for saying that "Constitutions are not made, but grow." The only meaning of such a maxim is the simple and obvious meaning that constitutions must be framed in accordance with anterior facts. They are weak, not because they are made, but because they are unwisely or unjustly made.

A Federal system is more artificial than other systems only because it is the highest refinement of human policy. It is more artificial only in the sense that all consummate achievements of art, of literature, of science, are more artificial; only in the sense that

every matured product of intelligence and reason is more artificial than the untutored instinct of the savage. That a body politic, thus formed, should be less compact than barbarian or feudal monarchies, would imply that civilization itself is anarchy.

The Federal systems of ancient Greece were weak, because their starting point was the separate sovereignty of cities; ours is strong because the collective sovereignty of the American people is the broad basis on which it rests. It might indeed be questioned whether the term "federal" is strictly applicable to a system that so radically departs from all former types. In the more exact phrase of Mr. Phillimore, we may call it a "composite state." It is, in every essential aspect, a new experiment, the logical working out of the most advanced political ideas of modern times.

The strange craft that shot so suddenly the other day into the harbor of St. Johns, when the frightened watchman fled his post announcing that a sinking ship was coming in, did not more truly embody an original idea, than do our institutions. Like that watchman, most of those abroad who, five years ago, had their gaze for the first time fixed upon us by the breaking out of the civil conflict, thought they saw a sinking ship. Like that little craft which has safely ploughed its way across the ocean, and now floats beside the frowning batteries of England, proclaiming, wherever she bears the Star Spangled Banner, that a new age of naval warfare has come, the Republic decried and denounced, with prophets of evil predicting that she was fit only for smooth seas and summer gales, across a darker and a stormier sea has held her victorious course, and to-day, in the pride of unbroken strength, and in the

majesty of perfect proportion, is proclaiming to the world the triumph of an experiment that has no parallel in the recorded history of mankind.

Fellow citizens, have I painted too bright a picture? Is the ship of the Republic safe in port, or is she still tossed on the open sea? Let us not disguise the difficulties of the hour. We have still a great work to do, a work, in some respects, the most complex and difficult ever presented to any people; but is it a work beyond our strength? If I had nothing in which to put my trust but an individual, or a party, I might indeed be filled with apprehension. But ours is not the government of one man, nor the government of one party. I look beyond the mere functionaries to the source from which they derive their powers. I turn from the petty jealousies and miserable bickerings of the servant's hall, to the serene atmosphere of the presence chamber. I build my hopes, not on the tinkering expedients of politicians, but in the sound, unerring instincts of the sovereign people.

No nation that ever existed depended so little as does ours upon its mere form of government. To my mind, the crowning moment in our great conflict was not when the first gun, fired on Sumter, was followed by the magnificent uprising of a great people; when the whole North burned with an enthusiasm that has had nothing like it since the days of the Crusades; but rather that dark, that dreadful hour when, with the nation reeling beneath the blow that smote its beloved chief, the great duties of the State passed without a break or a jar to the hands of his successor. That was the real triumph of our institutions. I would have all other days, however glorious, be forgotten. I would have all other

pictures fade away, before I would part with that, for not Gettysburg, nor Chattanooga, nor Petersburg, not Hooker fighting above the clouds, nor Farragut lashed to the mast-head, nor Sherman holding his mighty march to the sea that roared and clapped its hands as it sent to the sky the sheen of his terrible banners, was such a spectacle as the calm self-possession of that hour.

With such proofs of national capacity, can we doubt, fellow-citizens, that, with the blessing of Providence, the great problem before us will be solved? that the nation, guided by the great principles which illuminate her history, will march on without faltering, in the path on which the light shineth more and more, that, swayed by the increasing influences of a christian civilization, recognizing no distinction of color or race, extending to all, alike the blessings of liberty and the safeguards of law, the land of our fathers, coming from her baptism of blood, with the dove of divine peace resting upon her, will merit the benediction: "This is the people in which I am well pleased?" By the mercy of God, while Europe rings with arms, we are left to pursue the nobler arts of peace. Let the victories of war be eclipsed by the grander victories of Justice and Truth.

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